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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 12/02; Petition 12.090
Session:	Hundred and Fourteenth Regular Session (25 February – 15 March 2002)
Title/Style of Cause:	Jesus Enrique Valderrama Perea v. Ecuador
Doc. Type:	Decision
Decided by:	President: Juan Mendez; First Vice-President: Marta Altolaguirre; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Clare K. Roberts. Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the examination of this case, pursuant to Article 17 of the Commission's Rules of Procedure.
Dated:	27 February 2002
Citation:	Valderrama v. Ecuador, Petition 12.090, Inter-Am. C.H.R., Report No. 12/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
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## I. SUMMARY

1. On September 21, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission or “the IACHR”) received a complaint from Jesús Enrique Valderrama Perea, a Colombian citizen, in which he alleged that the Republic of Ecuador (“the State”) had incurred international responsibility due to his being held in preventive detention and the cruel treatment to which he had been subjected at the time. The preventive detention was prolonged as a result of the delay in the judicial proceedings. Mr. Valderrama is currently in detention without a final decision having been issued in his case.

2. The petitioner alleges that the facts denounced constitute a violation of various provisions of the American Convention on Human Rights (hereinafter the “American Convention”), including the following: right to humane treatment (Article 5); right to personal liberty (Article 7); right to a fair trial (Article 8); right to compensation (Article 10); right to privacy (Article 11); right to equal protection (Article 24), judicial protection (Article 25) and obligation to respect rights (Article 1(1)). He further claims to have fulfilled all the admissibility requirements stipulated by the Convention. As the State never responded to the letters of the Commission, it has thereby tacitly waived its right to submit objections to the admissibility of the present petition.

3. Without prejudging the merits, the IACHR concludes in this report that the case is admissible, since it meets the requirements set forth in Articles 46 and 47 of the American Convention. Consequently, the Inter-American Commission has decided to notify the parties of

that decision and to continue with an analysis of the merits regarding the alleged violation of Articles 1(1), 5, 7, 8, 10, 11, 24, and 25 of the American Convention.

## II. PROCESSING BY THE COMMISSION

4. On September 21, 1998, Jesús Enrique Valderrama Perea submitted a complaint to the Inter-American Commission, the pertinent parts of which were transmitted to the State on January 25, 1999, along with notice to the effect that it had 90 days to submit its observations. No response from the State to that communication was ever received. The petitioner submitted additional information in letters received on February 16 and March 27, 1999. On September 19, 2001, the Commission reiterated its request for information from the State, giving it a period of thirty days to transmit that information. That letter was never answered by the State either.

## III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

### A. The petitioner

5. According to the petition, Mr. Valderrama was detained on May 2, 1996 in Quito, Ecuador, as he was boarding a plane to Bogotá, Colombia. He was detained by three individuals who did not identify themselves or present an arrest warrant, and who beat and kicked him before taking him to the offices of Interpol in Quito.

6. Once he arrived at Interpol, he was interrogated by Captain Edmundo Mera, who asked him about his trip to Bogotá. The petitioner replied that he had traveled to Ecuador to buy gold for his family business in Colombia. When he asked why he had been detained, Captain Mera told him that he had been arrested for trafficking and that he would spend the rest of his life in prison.

7. Subsequently, the petitioner was taken, by physical violence, to a parking lot, where they pointed out a man and asked him if he was his accomplice. When he did not answer, they threatened to torture him. He was then taken to the bathroom, where they made him get down on his knees and then put thumb locks on him to which they tied a rope to hang him from the ceiling, which ripped his arms. He said that the police stood on his ankles to push his body down while they hit him all over his body with clubs wrapped in cloth, and demanded that he confess to the crimes they accused him of. When he asked for water to drink, they gave him urine from the toilets. Finally, police officers Edmundo Mera and Mauro Vargas told him that they were taking him to Guayaquil, that his parents were already at Interpol asking where he was, and that if he confessed to his crimes nothing would happen to his parents.

8. In his petition dated of April 15, 1999, the petitioner informed the Commission that he had been in detention for 24 months and that the court hearing his case had not yet handed down a decision. He further reported that on November 6, 1998, Public Prosecutor No. 9 of the Guayas Criminal Court issued an opinion accusing him of drug trafficking offenses, and that it had taken him over two years to reach that conclusion.

9. The petitioner said that when he was first detained, he had asked to speak with someone from his Embassy, but that Captain Mera had responded that in that country (Ecuador) he had no rights.

B. The State

10. The State failed to respond to any of the communications sent by the Inter-American Commission or to give its views on the alleged facts.

IV. ANALYSIS

A. Competence of the Inter-American Commission *ratione personae*, *ratione materiae*, *ratione temporis* y *ratione loci*

11. Under Article 44 of the American Convention, the petitioner is authorized to lodge complaints with the IACHR. The petition indicates that the alleged victim is a person, with regard to whom Ecuador undertook a commitment to respect and ensure the rights enshrined in the American Convention. As far as the State is concerned, the Commission points out that Ecuador has been a party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Consequently, the Commission is competent to examine the petition *ratione personae*.

12. The Commission is competent *ratione loci* to consider the petition because it alleges violations of rights protected under the American Convention which took place within the territory of a state party to the Convention. The IACHR is competent *ratione temporis*, because the obligation to respect and ensure the rights protected by the American Convention was already in force in the State on the date on which the facts alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition denounces violations of human rights protected by the American Convention.

B. Other requirements for admissibility of the petition

a. Exhaustion of domestic remedies

13. The petitioner reports that there was an unjustified delay in the judicial proceedings in this case, since five years lapsed from the time he was detained, during which time he was never informed of the existence of a final judgment.

14. The State did not respond throughout the proceedings before the IACHR. It never made any reference to domestic remedies available in Ecuador, nor did it deny the unjustified delay alleged by petitioner.

15. The Inter-American Commission observes that, in the case in point, the State never argued failure to exhaust domestic remedies in the six months that lapsed since the first communication sent by the Inter-American Commission.

16. The Inter-American Court of Human Rights has reiterated that when a State fails to present an objection based on lack of exhaustion of domestic remedies, that State is presumed tacitly to be waiving its right to this defense.[FN2] Therefore, the Inter-American Commission finds that the State has waived its right to object to admissibility based on failure to exhaust domestic remedies, since it did not present said objection either within the legally established time period or at the opportunities available to it during the proceedings.

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[FN2] See, for instance, the Inter-American Court of Human Rights, Case of the Community of Mayagna (Sumo) Awas Tingni, Nicaragua, Decision on preliminary objections of February 1, 2000, para. 53. In that same decision, the Inter-American Court found that “to present a valid opposition to the admissibility of a petition ... the State must specifically and opportunely invoke the rule of lack of exhaustion of domestic remedies” (emphasis in the original). *Idem*, para. 54.  
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b. Deadline for presentation

17. In the petition under consideration, the IACHR found that the State tacitly renounced its right to present an objection based on lack of exhaustion of domestic remedies. Hence, the requirement established in Article 46(1)(b) of the American Convention does not apply. However, the requirements under the Convention regarding exhaustion of domestic remedies and lodging of the petition within a period of six months from the decision that exhausts domestic remedies are independent of each other. As a result, the Inter-American Commission must determine whether the petition being examined was presented within a reasonable period of time. On this point, the IACHR notes that the petitioners argued that there was an unjustified delay, but in order to apply this exception there must be a final decision issued by the national courts. On these grounds, the IACHR finds that the petition was presented within a reasonable period of time.

c. Duplication of procedures and res judicata

18. The case file contains no information that could lead to a determination that this matter is pending settlement in another international procedure or that it has been previously studied by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions set forth in Article 46(1)(d) and in Article 47(d) of the American Convention are not applicable.

d. Nature of the alleged events

19. The Commission considers that if the alleged facts are proven to be true, they will constitute violations of the rights guaranteed in Articles 1(1), 5, 7, 8, 10, 11, 24, and 25 of the American Convention.

V. CONCLUSIONS

20. The Inter-American Commission concludes that it is competent to examine this case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. On the

basis of the de facto and de jure arguments set forth in this document, and without prejudice to the merits of the petition,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible insofar as it refers to alleged violations of rights protected in Articles 1(1), 5, 7, 8, 10, 11, 24, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case; and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 27 day of the month of February in the year 2002. (Signed) Juan Méndez, President; Marta Altolaquirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners: Robert K. Goldman and Clare K. Roberts.